Jeffrey A. Simkovic
BILLINGS LEGAL, PLLC
20 North 29th Street
Billings, MT 59101
(406) 248-7000
Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA - BILLINGS DIVISION

Civil Action No. 12-CV-00074-RFC-CSO

MARK J. KELLEY,

Plaintiff,

v.

BILLINGS CLINIC,

Defendant.

STATEMENT OF DISPUTED ISSUES

1. Plaintiff Mark Kelley was employed as a staff nurse and charge nurse at the Billings Clinic, where he was highly regarded based upon his written employment evaluations. (Attachment 1)
2. Kelley's boss was Rich Mickelson, the Emergency Department director Kelley worked in close association with Mickelson, sometimes documenting their communications in writing, other times verbally discussing issues with Mickelson. (Attachment 2)

3. As a charge nurse Kelley "ran a tight ship." He was "fair" but also was "a strict ruler." (Attachment 3, p. 23-24)

4. Kelley did encounter problematic behavior by coworkers while charge nurse. Some of this behavior was sexual in nature, offensive, and directed at Kelley. (Attachment 2)

5. Kelley also observed other behavior that concerned him, both as it related to the treatment of patients, and as it related to interpersonal relationships in the emergency department. (Attachment 2)

6. Though Kelley consistently presented all of his concerns to Mickelson both verbally and in writing, Mickelson did not instruct Kelley how to deal with the inappropriate conduct other than to "relax." (Attachment 2)

7. Mickelson discouraged Kelley from presenting his complaints to human resources at the time Kelley was a charge nurse, telling him that the emergency department should keep things "in house." (Attachment 2)

8. Kelley ultimately stepped down as charge nurse on Feb 13 and contacted Mary Ellen James, Director of Human Resources for Billings Clinic. (Defendant's Attachment 39)

9. Kelley met with James on February 18, 2011, where he discussed the various incidents that had occurred over the previous year. (Defendant's Attachment 39)

10. Mickelson had received similar reports before Kelley's complaint to Mary Ellen James, and taken no action in response. (Attachment 13, Defendant's Attachment 37, Attachment 4 p. 55-56)

11. James spoke with Rich Mickelson, Laurie Big Medicine and Rebecca Frye, in that order, after her meeting with Kelly. (Attachment 11)

12. Big Medicine denied to Big Medicine having ever rubbed her breasts against Kelly, however Rebecca Frye indicated that she was aware of such incident having occurred as Frye had heard Big Medicine speaking in the emergency department of a sexually oriented action with Kelley. Frye also noted that there appeared to her that it was difficult for Kelley being one of the few males on nights. James did not have any discussion Big Medicine about the information provided by Frye that appeared to conflict with Big Medicine's denial of any incident of a sexual nature having occurred. (Attachment 6, p. 65-84).

13. James did substantiate the Tokyo Sauna incident as Big Medicine had admitted to it, and reported the same to Kelley in her letter to him on March 17, 2011. James did not mention the information she had received from Frye that it was "difficult" for Mark being one of the few males on nights, nor that Frye had heard Big Medicine speaking of an incident of a sexual

nature, other than to note that Frye had not witnessed the interaction itself. (Attachment 5)

14. Mickelson knew about the Tokyo Sauna incident on April 3, 2010 (Attachment 12).

15. Laurie Big Medicine was not disciplined until June 20, 2011. (Defendant's Attachment 40)

16. James testified that Mickelson waited "too long" to address the Tokyo Sauna incident (Attachment 6, p. 48-52).

17. Big Medicine testified under oath that she does not know Tokyo Sauna is. (Attachment 7, p. 40-45).

18. James met with Mickelson on Feb 24, 2011 (Defendant's attachment 38)

19. Mickelson sent Big Medicine an email on Feb 26, 2011instructing her on how she should act around Kelley. Big Medicine responded with an email in which she described interactions with Kelley on the morning of February 26, but omitted any mention of having heard a report of patient abuse. (Attachment E, DP 282).

20. On the night of February 26, 2011 Mickelson went in to the emergency department to "address communication issues" between Kelley and his co-employees. At this meeting, Mickelson received a report from various CT

techs about Kelley's interactions with a patient the previous night. (Attachment 4, p. 32-49).

21. Kelley was accused of having abused four different patients (Attachment 11), and the Billings Clinic reported to the board of nursing that it had substantiated four separate incidents involving Kelley. (Attachment 8)

22. The Board of Nursing did not discipline Kelley for any conduct involving abuse of patients. (Attachment 9)

23. Only two out the four patients that Kelley allegedly abused have ever even been identified. (Attachment 2) (Attachment 10)

24. Mary Ellen James knew about the patient abuse investigation, and even interviewed two of the CT techs who had made the report about Kelley as part of her investigation. (Attachment 5)

25. Lu Byrd knew about the human resources complaint Mark had made, but did not allow any aspect of that complaint to be considered in the patient abuse investigation, even though it involved similar parties. (Attachment 11)

DATED this 6th day of September, 2013

BILLINGS LEGAL, PLLC
/s/ Jeffrey A. Simkovic
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